

MT LEGISLATIVE HISTORY

Chapter 283 1988

Bill (H) 609 S _____

Original bill & hist. ____C

H. Committee on Judiciary

S. Committee on Judiciary

Hearing Date(s) Feb 06 ☒ C

Hearing Date(s) Mar 21 ☒ C

Feb 07 ☒ C

____C

____C

____C

____C

____C

Date Out Feb 07 ☒ C

Mar 21 ☒ C

Did this bill originate in an interim committee? ____Yes ____No

Committee _____

Report _____

CHAIRMAN--MAZUREK, JOE

SECRETARY-STALEY, CINDY

NORMAL SCHEDULE==> SITE: OLD SUPREME COURT ROOM

DAYS: M-TU-W-TH-F

TIME: 10:00 A.M.-12 NOON

BILL NO	REFER DATE	HEARING DATE	CONSIDERATION DATES	COMMITTEE ACTION	REREFERRED TO COMM	DATE OUT
HB0587	2/19	3/20		CONCUR		3/20
GOULD, R. BUDD			TRANSFER OF PRISONER TO COUNTRY HE IS A CITIZEN OF			
HB0594	2/22	3/21		CONCUR		3/23
COBB, JOHN			FLOODPLAIN MANAGEMENT - NOTICE OF ENTRY AND RELEASE OF NAMES REQUIRED			
HB0600	2/15	3/06		CONCUR AS AMENDED		3/6
MERCER, JOHN A.			INCLUDE OUT-OF-STATE CONVICTIONS FOR DUI & BROADEN CHARGING ON DUI			
HB0609	2/12	3/21		CONCUR		3/21
RAMIREZ, JACK			DURABLE POWERS OF ATTORNEY			
HB0613	2/22	3/19		ADVERSE REPORT		3/23
HANNAH, TOM			RESTRICT COURT ORDERED CHANGES TO BALLOT AFTER CERTIFICATION			
HB0620	2/19	3/05		CONCUR AS AMENDED		3/5
BRADLEY, DOROTHY			REQUIRE TRAINING & CERTIFICATION OF LOWER COURT JUDGES			
HB0622	2/22	3/21		CONCUR		3/23
THOFT, BOB			DELETE PURPOSE ELEMENT FROM BAD CHECK STATUTE			
HB0627	2/21				PUBLIC HEALTH	
KEENAN, NANCY			DUTIES AND RESPONSIBILITIES OF GUARDIAN AD LITEM			
HB0639	2/14	3/07		CONCUR AS AMENDED		3/7
NATHE, DENNIS G.			REVISION OF POLYGRAPH LICENSURE LAW			
HB0643	2/21	3/26		CONCUR AS AMENDED		3/28
THOFT, BOB			PROHIBIT LOCAL ORDINANCE BANNING OR REGULATING FIREARM SALE OR POSSESSION			
HB0644	2/15	3/11		CONCUR		3/11
NATHE, DENNIS G.			SEX OFFENSE AGAINST PERSON UNDER 16 YEARS OF AGE; PRESENTENCE REPORT			

MONTANA STATE SENATE
JUDICIARY COMMITTEE
MINUTES OF THE MEETING

March 21, 1985

The fifty-fourth meeting of the Senate Judiciary Committee was called to order at 10:07 a.m. on March 21, 1985, by Chairman Joe Mazurek in Room 325 of the Capitol Building.

ROLL CALL: All committee members were present.

CONSIDERATION OF HB 609: Representative Jack Ramirez, sponsor of HB 609, testified this bill does not require a whole lot of concern. The National Commission on Uniform Laws recommended this legislation regarding durable powers of attorneys. We have the law on the books already. It is a very important law. This will save the expense of people who have relatives who become incapacitated. With a durable power of attorney, they are able to deal without the tremendous expense of a conservatorship.

PROPOSERS: Doug Olson, of the State of Montana Seniors' Office, presented written testimony in support of the bill (Exhibit 1).

OPPOSERS: None.

QUESTIONS FROM THE COMMITTEE: None.

CLOSING STATEMENT: Representative Ramirez stated he had some written material from the Commission of Uniform Laws if anyone wanted to see it.

Hearing on HB 609 was closed.

ACTION ON HB 609: Senator Pinsoneault moved HB 609 be recommended BE CONCURRED IN. The motion carried unanimously.

CONSIDERATION OF HB 541: Representative Paula Darko, sponsor of HB 541, testified this bill was submitted at the request of several district court judges (see correspondence regarding bill request, Exhibit 2). What this bill says is any person who multiplies legal proceedings is responsible for the payment of costs. There were questions in the House committee that the court would invoke this reprimand. There is some federal case law cited in the material provided to the committee.

PROPOSERS: None.

ROLL CALL

SENATE JUDICIARY

COMMITTEE

49th LEGISLATIVE SESSION -- 1985

Date 03/2/85

NAME	PRESENT	ABSENT	EXCUSED
Senator Chet Blaylock	X		
Senator Bob Brown	X		
Senator Bruce D. Crippen	X		
Senator Jack Galt	X		
Senator R. J. "Dick" Pinsoneault	X		
Senator James Shaw	X		
Senator Thomas E. Towe	X		
Senator William P. Yellowtail, Jr.	X		
Vice Chairman Senator M. K. "Kermit" Daniels	X		
Chairman Senator Joe Mazurek	X		

3/2

Predicting

VISITORS' REGISTER

[illegible]

(Please leave prepared statement with Secretary)

SENIORS' OFFICE
LEGAL AND OMBUDSMAN SERVICES



TED SCHWINDEN, GOVERNOR

P.O. BOX 232
CAPITOL STATION

STATE OF MONTANA

(406) 444-4676
1-(800) 332-2272

HELENA, MONTANA 59620

March 21, 1985

Senators
Senate Judiciary Committee
49th Legislative Session
Montana Legislature
State Capitol
Helena, Montana 59620

re: House Bill 609

Dear Chairman Mazurek & Committee Members:

My name is Doug Olson and I serve as the attorney for the State charged with the responsibility under the federal Older Americans Act for coordinating and developing legal services for senior citizens. In addition, I provide legal counsel to the State Long-term Care Ombudsman who represents the institutionalized elderly in nursing homes, personal care homes and some boarding homes.

One of the legal mechanisms that I encourage senior citizens to consider setting up to deal with the likelihood that they may at sometime in their future be unable to direct their own affairs is a "durable power-of-attorney". Under common law a power-of-attorney ceased to operate at the time the principal, or creator of the relationship, became disabled. A durable power-of-attorney or one that continues or comes into being at the time a person becomes disabled did not exist at common-law but is now recognized through statutory law. The Uniform Probate Code which Montana had adopted in the mid-1970's recognized durable powers-of-attorney but the language of the statutes found in Title 72, Chapter 5, Part 5, has been confusing. It also did not utilize the generally accepted terminology of a "durable power-of-attorney" but spoke instead of powers not affected by disability.

House Bill 609 introduced by Rep. Ramirez will clarify the power-of-attorney statutes found in Montana's Probate Code and make the concept of a durable power-of-attorney more readily understandable. The clearer this concept becomes the greater the likelihood that it will be more widely utilized. A timely executed durable power-of-attorney may preclude more costly guardianship or conservatorship hearings at a later date.

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 1

DATE 032185

BILL NO. HB 609

Letter to Senate Judiciary Committee
49th Legislative Session
re: House Bill 609
March 21, 1985
Page 2

Many families are confronted with relatives that are diagnosed as suffering from Alzheimer's disease that results in a person's gradual deterioration of the brain and nervous system. By encouraging the execution of durable powers-of-attorneys at the early stages of this disease, the victim can have a voice in how his affairs will be managed when he is no longer able to do so.

I would urge that your Committee when it takes action on House Bill 609 issue a report urging its passage. Thank you for listening to my comments on this bill.

Sincerely,


Douglas B. Olson

Attorney
Seniors' Office of Legal &
Ombudsman Services

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 1
DATE 032185
BILL NO. HB 609

STANDING COMMITTEE REPORT

March 21 19 35

MR. PRESIDENT

JUDICIARY

We, your committee on.....

having had under consideration..... HOUSE BILL No. 603

third reading copy (blue)
color

(Senator Mazurek)

DURABLE POWERS OF ATTORNEY

Respectfully report as follows: That..... HOUSE BILL No. 603

BE CONCURRED IN

~~DO NOT PASS~~

~~DO NOT PASS~~

Senator Joe Mazurek

Chairman.

STATUS SHEETFORTY-NINTH

LEGISLATIVE SESSION

COMMITTEE ON JUDICIARY

HOUSE BILL NO.	ENTERED COMM.	DATE CONSIDERED	OUT OF COMM.	DO PASS DATE	DO NOT PASS DATE	DO PASS AS AMEND. DATE	BE CON- CURRED IN DATE	BE CONC. IN AS AMENDED DATE	BE NOT CON- CURRED IN DATE
HB 586	1/31/85	2/13/85	2/13/85			2/13/85			
HB 587	1/31/85	2/13/85	2/13/85	2/13/85					
HB 588	1/31/85	2/13/85	2/13/85	2/13/85					
HB 600	1/31/85	2/8/85 2/11/85	2/11/85	2/11/85					
HB 594	1/31/85	2/14/85 2/15/85	2/15/85			2/15/85			
HB 609	2/1/85	2/6/85 2/7/85	2/7/85	2/7/85					
HB 619	2/1/85	2/7/85 2/14/85	2/14/85		2/14/85				
HB 620	2/1/85	2/11/85 2/13/85	2/13/85	2/13/85					
HB 622	2/1/85	2/8/85 2/16/85	2/16/85	2/16/85					
HB 627	2/1/85	2/13/85	2/13/85			2/13/85			
HB 643	2/2/85	2/14/85 2/15/85	2/15/85	2/15/85					
HB 644	2/2/85	2/11/85	2/11/85			2/11/85			
HB 656	2/4/85	2/11/85 2/14/85	2/14/85			2/14/85			
HB 664	2/4/85	2/8/85 2/7/85	2/8/85		2/8/85				
HB 665	2/4/85	2/22/85 2/23/85	2/23/85			2/23/85			
HB 667	2/4/85	2/8/85	2/8/85	2/8/85					

attorney general which points that the attorney general concluded that it is not a misdemeanor for one to drive in violation if the restrictions imposed on a probationary driver's license issued to a first-time DUI offender pursuant to section 61-11-101(2), MCA. As a result of this opinion, Mr. Majerus felt that there should be some legislation introduced to correct this. A copy of this letter was marked as Exhibit J and attached hereto. Mr. Majerus also passed out samples of the probationary Montana driver licenses. They have been attached hereto.

There being no further proponents or opponents, Rep. Kennerly closed. There being no questions from the committee, hearing closed on HB 531.

CONSIDERATION OF HOUSE BILL NO. 609: Rep. Jack Ramirez, sponsor of this bill, stated this bill was probably of interest to lawyers only. It is an act to revise the power of attorney provisions of the probate code to clarify the durable powers of attorney provisions. Durable powers of attorney is a power of attorney that continues after a person's incompetency or in his absence. He said this bill was suggested by the chairman of the Tax Probate Section of the Montana Bar Association. All the bill does is bring the act up to date. He said the durable power of attorney is really a substitute for conservatorship.

There being no further proponents or opponents, Rep. Ramirez closed.

In response to a question of Rep. Rapp-Svrcek about who determines incapacitation, Rep. Ramirez stated that there is a statutory procedure that determines incapacitation.

Hearing closed on HB 609.

CONSIDERATION OF HOUSE BILL NO. 353: Rep. Richard Nelson, District #6, appeared and offered testimony in support of this bill. He informed the committee that this bill was requested by the 11th Judicial District Judge in Kalispell. The intent of the bill is to give the definition of burglary and aggravated burglary to coincide with each other.

There were no proponents or opponents, Rep. Nelson closed.

Chairman Hannah stated that due to the press of time, questions would be reserved for executive session.

Hearing closed on HB 353.

DAILY ROLL CALL

HOUSE JUDICIARY COMMITTEE

49th LEGISLATIVE SESSION -- 1985

Date 2-6-85

NAME	PRESENT	ABSENT	EXCUSED
Tom Hannah (Chairman)	✓		
Dave Brown (Vice Chairman)	✓		
Kelly Addy	✓		
Toni Bergene	✓		
John Cobb	✓		
Paula Darko	✓		
Ralph Eudaily	✓		
Budd Gould	✓		
Edward Grady	✓		
Joe Hammond	✓		
Kerry Kevser	✓		
Kurt Krueger	✓		
John Mercer	✓		
Joan Miles	✓		
John Montayne	✓		
Jesse O'Hara	✓		
Bing Poff	✓		
Paul Rapp-Svrcek	✓		

MINUTES FOR THE MEETING
JUDICIARY COMMITTEE
MONTANA STATE
HOUSE OF REPRESENTATIVES

February 7, 1985

An executive session of the Judiciary Committee was called to order by Chairman Tom Hannah on Thursday, February 7, 1985 at 7:00 a.m. in Room 312-3 of the State Capitol Building.

ROLL CALL: All members were present with the exception of Rep. O'Hara.

ACTION ON HOUSE BILL NO. 609: Rep. Keyser moved that HB 609 DO PASS. The motion was seconded by Rep. Mercer and passed with Reps. Darko and Bergene dissenting. There was no further discussion on the bill.

ACTION ON HOUSE BILL NO. 440: Rep. Addy moved that HB 440 DO PASS. The motion was seconded by Rep. Mercer and passed unanimously.

ACTION ON HOUSE BILL NO. 443: Rep. Gould moved that HB 443 DO PASS. The motion was seconded by Rep. Hammond. Rep. Gould stated his full support for the bill.

Rep. Kruegar moved to amend the bill as follows:

1. Title, line 9.

Following: "MONTH;"

Insert: "REQUIRING THE DEPARTMENT TO FORWARD ANY CHILD SUPPORT PAYMENTS TO THE OBLIGEE WITHIN 10 DAYS OF RECEIPT OF THE PAYMENT FROM THE OBLIGOR;"

2. Page 5, following line 8.

Insert: "(3) Whenever an obligation for support is paid through the support enforcement and collections unit of the department, the department must forward payment to the obligee within 10 days of the department's receipt of payment from the obligor."

Rep. Krueger addressed his amendment saying although the bill has a great deal of merit, he feels the larger bureaucracy gets, the more cumbersome it gets. He desires to see the child support money distributed to the child's mother as quickly as possible.

This motion was seconded by Rep. Brown.

Rep. Keyser stated his dislike for the broad language in the bill.

Rep. Addy said that he is confused with the intent of the bill which allows the Department of Revenue to be

DAILY ROLL CALL

HOUSE JUDICIARY COMMITTEE

49th LEGISLATIVE SESSION -- 1985

Date 2-7-85

EXECUTIVE SESSION - 7:00 a.m.

NAME	PRESENT	ABSENT	EXCUSED
Tom Hannah (Chairman)	✓		
Dave Brown (Vice Chairman)	✓		
Kelly Addy	✓		
Toni Bergene	✓		
John Cobb	✓		
Paula Darko	✓		
Ralph Eudaily	✓		
Budd Gould	✓		
Edward Grady	✓		
Joe Hammond	✓		
Kerry Keyser	✓		
Kurt Krueger	✓		
John Mercer	✓		
Joan Miles	✓		
John Montayne	✓		
Jesse O'Hara		✓	
Bing Poff	✓		
Paul Rapp-Svrcek	✓		

STANDING COMMITTEE REPORT

February 7

1935

MR. SPEAKER:

We, your committee on JUDICIARY

having had under consideration HOUSE Bill No. 609

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DURABLE POWERS OF ATTORNEY

Respectfully report as follows: That HOUSE Bill No. 609

DO PASS